

Employment and Training Administration, Labor

§ 655.93

Cir. 1976). Once a determination of no adverse effect has been made, the availability of U.S. workers can be tested only if U.S. workers are actively recruited through the offer of wages, terms, benefits, and conditions at least at the minimum level or the level offered to the aliens, whichever is higher. The regulations in this subpart set forth requirements for recruiting U.S. workers in accordance with this principle.

(d) *Construction.* This subpart shall be construed to effectuate the purpose of the INA that U.S. workers rather than aliens be employed wherever possible. *Elton Orchards, Inc. v. Brennan*, 508 F.2d 493, 500 (1st Cir. 1974); *Flecha v. Quiros*, 567 F.2d 1154, 1156 (1st Cir. 1977). Where temporary alien workers are admitted, the terms and conditions of their employment must not result in a lowering of the wages, terms, and conditions of domestic workers similarly employed. *Williams v. Usery*, 531 F.2d 305, 306 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000, and the job benefits extended to any U.S. workers shall be at least those extended to the alien workers.

EFFECTIVE DATE NOTE: At 65 FR 43542, July 13, 2000, § 655.90(a) was amended by adding before the last sentence a new sentence, effective Nov. 13, 2000. The effective date was delayed until Oct. 1, 2001 at 65 FR 67628, Nov. 13, 2000. The effective date was further delayed until Sept. 27, 2002 at 66 FR 49275, Sept. 27, 2001. For the convenience of the user, the added text is set forth as follows:

§ 655.90 Scope and purpose of subpart B.

(a) * * * This subpart also describes the processes and procedures governing consideration of requests for H-2A petition approval and revocation, set out in the Immigration and Naturalization Service regulations at 8 CFR 214.2(h). * * *

* * * * *

§ 655.92 Authority of the Regional Administrator.

Under this subpart, the accepting for consideration and the making of temporary alien agricultural labor certification determinations are ordinarily performed by the Regional Administrator (RA) of an Employment and Training Administration region, who, in turn, may delegate this responsibility to a designated staff member.

The Director of the United States Employment Service, however, may direct that certain types of applications or certain applications shall be handled by, and the determinations made by USES in Washington, DC. In those cases, the RA will informally advise the employer or agent of the name of the official who will make determinations with respect to the application.

EFFECTIVE DATE NOTE: At 65 FR 43542, July 13, 2000, § 655.92 was amended by revising the first sentence, effective Nov. 13, 2000. The effective date was delayed until Oct. 1, 2001 at 65 FR 67628, Nov. 13, 2000. The effective date was further delayed until Sept. 27, 2002 at 66 FR 49275, Sept. 27, 2001. For the convenience of the user, the revised text is set forth as follows:

§ 655.92 Authority of the Regional Administrator.

Under this subpart and INS regulations at 8 CFR 214.2(h), the accepting for consideration, the making of temporary alien agricultural labor certification determinations, and H-2A petition determinations ordinarily are performed by the Regional Administrator (RA) of an Employment and Training Administration region, who, in turn, may delegate this responsibility to a designated staff member. * * *

* * * * *

§ 655.93 Special circumstances.

(a) *Systematic process.* The regulations under this subpart are designed to provide a systematic process for handling applications from the kinds of employers who have historically utilized non-immigrant alien workers in agriculture, usually in relation to the production or harvesting of a particular agricultural crop for market, and which normally share such characteristics as:

(1) A fixed-site farm, ranch, or similar establishment;

(2) A need for workers to come to their establishment from other areas to perform services or labor in and around their establishment;

(3) Labor needs which will normally be controlled by environmental conditions, particularly weather and sunshine; and

(4) A reasonably regular workday or workweek.

(b) *Establishment of special procedures.* In order to provide for a limited degree